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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,708	02/21/2002	Sco-Young Park	1599-0214P	6239

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EXAMINER

TATE, CHRISTOPHER ROBIN

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 09/30/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/078,708

Applicant(s)
Park et al.

Examiner
Christopher Tate

Art Unit
1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 22, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

The amendment filed July 22, 2003 is acknowledged and has been entered. Claims 1-7 have been examined on the merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 U.S.C. § 112

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 remains vague and indefinite because it still lacks one or more essential steps with respect to reciting a complete process for preparing the instantly claimed red ginseng product - i.e., "steaming *Panax* spp. under an oxygen-enriched atmosphere" does not adequately convey a complete process which actually results in red ginseng being prepared. Further, the relative phrase "oxygen-enriched atmosphere" therein does not adequately convey the oxygen-enrichment conditions necessary (such as the limitations set forth in claim 2) for such red ginseng preparation with respect to sufficiently delineating the metes and bounds of the relative phrase "oxygen-enriched". It is, therefore, strongly suggested that this overall phrase be expanded to recite --steaming *Panax* spp. under an oxygen-enriched atmosphere containing 50% or more oxygen for a sufficient time to prepare the red ginseng--.

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All other claims depend directly or indirectly from rejected claims and are, therefore, also rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Claim Rejections - 35 U.S.C. § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-6, and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kim et al.

Red ginseng, and a method of preparing red ginseng via steaming *Panax* spp. under oxygen-enriched atmosphere is claimed. Dependent claims include the steaming the *Panax* spp. within an autoclave for about 3 hours.

Kim et al. teach preparing red ginseng via steaming within an autoclave for 3 hours under conditions which inherently include an atmosphere containing oxygen. In addition, Kim et al. expressly disclose that it is well known in the art to conventionally prepare art-recognized red

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ginseng via steaming [please note that 1 atm. of oxygen is normal atmosphere and, thus, would be inherent within the steaming environment used/disclosed by Kim et al - further, the atmosphere in which the red ginseng prepared by Kim et al. (and/or disclosed by Kim et al.) is "oxygen-enriched" compared to (relative to) an atmosphere containing less oxygen (such as within a vacuum)]. - see entire document including col 1, lines 52-65; col 5, Example 1; and col 6, Table 1.

With respect to the red ginseng product instantly claimed, the referenced and art-recognized conventional steam-processed red ginseng products (e.g., as disclosed by Kim et al.) appear to be identical to the presently claimed red ginseng product and is/are considered to anticipate the claimed red ginseng product. Consequently, the claimed red ginseng product (as well as the method of preparing the red ginseng product defined by instant claims 1 and 5) appear to be anticipated by the reference.

In the alternative, even if the claimed red ginseng product is not identical to the referenced red ginseng product with regard to some unidentified characteristics, the differences between that which is disclosed and that which is claimed are considered to be so slight that the referenced steam-processed red ginseng products are likely to inherently possess the same characteristics of the claimed red ginseng product particularly in view of the similar characteristics which they have been shown to share (as well as the similar steaming methods by which they were prepared). Thus, the claimed red ginseng product would have been obvious to those of ordinary skill in the art within the meaning of U.S.C. 103.

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Accordingly, the claimed invention as a whole was at least *prima facie* obvious, if not anticipated by the reference, especially in the absence of sufficient, clear, and convincing evidence to the contrary.

To hasten prosecution, it is strongly suggested that the instant red ginseng product claims be canceled in response to this Office action.

Applicants' arguments with respect to the art rejection above as they pertain to the Kim reference have been carefully considered but are not deemed to be persuasive of error in the rejection. Applicants argue that Kim et al. disclose s processed red ginseng extract wherein the ginseng or extract is processed by heat treating at a much higher temperature. However, the instant claims are not limited to the ginseng being steamed within any particular temperature range. Further, as discussed above, conventional steam-preparation of red ginseng (as disclosed by Kim et al.) is performed at lower temperature ranges (see, e.g., col 1, lines 52-65).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Tate whose telephone number is (703) 305-7114. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached at (703) 306-3220. The Group receptionist may be reached at (703) 308-0196. The fax number for art unit 1654 is (703) 872-9306.



Christopher R. Tate
Primary Examiner, Group 1654